


OGC Has Reviewed

1 June 1978

DD/A Registry  
File *Personnel*

MEMORANDUM FOR: General Counsel

FROM

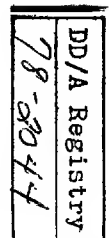
  
Associate General Counsel

STATINTL

SUBJECT : Employee Tenure Statements

1. You have asked me to review the alternative statements on employee tenure, one of which the Director might issue within the Agency in some form, possibly in the Notes from the Director. It is to be expected also that the issuance will become known elsewhere and might appear in the press.

2. Both statements indicate that portions of current policy are to be continued. We would continue to have a three-year probationary period. Termination at any time for inadequate performance or for cause would still be in order. Surplus situations--that is, reductions in force or abolition of functions or reduced need for certain functions--could require terminations, as they have in the past. But Statement No. 1 would also announce what is essentially a new policy--within three years of retirement eligibility employees would be essentially free of risk of termination, but prior to reaching the three-year mark and after reaching retirement eligibility, employees would be subject to forced retirement in order to provide promotion and new hire headroom. They would be especially vulnerable upon reaching eligibility.



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6. Perhaps the most important point to urge is that the proposal seems inherently unfair and possibly self-defeating. We have long had a policy of career service, of employee willingness to serve wherever and in any job, coupled with the reciprocal concept of merit and tenure. Further we have known, and long before our recent and current front-page problems, that for certain kinds of employees--case officers among them--it is difficult to go on from CIA to other employment. A policy which would say to all that they may be forced out at mid-career or just short of retirement eligibility, notwithstanding prolonged, superior performance, if read and understood by employees, surely would and should cause the farsighted and responsible ones among them to opt out at an early stage. Employees in their upper 40s and mid-50s, holding the most responsible jobs of their careers, in most cases, and probably bearing their greatest financial burdens, would be under a heavier threat than at any other time (except the early probation period).

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8. Although the first statement does not specifically address the point, it seems to contemplate some sort of a minimum quota for promotions. This would seem contradictory to the basic theory of promotions in that promotions should be on merit.

9. Some less general observations:

a. In Statement No. 1 at the top of page 2, there appears to be an inconsistency with respect to the relationship of terminating the bottom three percent and hiring or promoting more efficient employees. If the bottom three percent is not sufficient to create the additional headroom desired, how is the deficiency to be made up?

b. At the bottom of page 2 of Statement No. 1, there is a reference to "the definition as found in [REDACTED]" but there are no definitions in that regulation.

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c. If the statement is issued, it should be revised to make clear the forced retirement of those eligible for retirement means only those eligible for retirement who thereby would receive an immediate annuity.

d. Some of the concepts inherent in the statements are not reflected in our regulations and the latter would have to be adjusted if these policies are adopted.

e. In the middle of page 2 of Statement No. 2, there is an indication that employees in the low three percent who are also given a poor performance indication probably should be dismissed.

STATINTL [REDACTED] does not require that both of those factors exist and it does not seem logical to so require.

f. If the new policy is not adopted or is dropped, Statement No. 1 of course would not be issued as is. The parts which would not require change and all of Statement No. 2 could be abandoned also since they merely state policy embodied in current regulations.



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Attachment

Office of General Counsel  
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2 June 1978

NOTE FOR: Jack Blake

FROM : Anthony A. Lapham

Jack,

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Attached is a memorandum to me from [REDACTED]  
[REDACTED] on the two alternative employee tenure  
statements. He concludes there is a serious legal  
question as to one of them and that in any event  
that proposed policy is inherently unfair and may  
be self-defeating. I agree.

[REDACTED]

Tony

STATINTL

Attachment

## ROUTING AND RECORD SHEET

**DD/A Registry**  
**File** *Personnel*

| SUBJECT: (Optional)  |   |                    |  |                    |   |
|--|---|--------------------|--|--------------------|---|
| FROM: John F. Blake<br>Deputy Director for Administration<br>7D 24 Hqs |   | EXTENSION<br>5454  | NO. <i>78-55871</i><br>DATE 16 May 1978  |                    |   |
| TO: (Officer designation, room number, and building)                   | DATE<br><table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">RECEIVED</th> <th style="width: 50%;">FORWARDED</th> </tr> </table> | RECEIVED           | FORWARDED  | OFFICER'S INITIALS | COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.) |
| RECEIVED   | FORWARDED   |                    |  |                    |   |
| 1. Director of Central Intelligence<br>7D 5607 Hqs                     | <i>Rec'd 17 May</i>   |                    | Sir: STATINTL<br><br>Statement No. 1 is now being reviewed by the Office of General Counsel to ensure that there are no legal objections. I have asked them to expedite the matter.<br><br><br>John F. Blake |                    |   |
| 2.   |   |                    |  |                    |   |
| 3.   |   |                    |  |                    |   |
| 4. <i>FO/DDA</i><br>5.   | <i>5/22</i>   | <i>[Signature]</i> |  |                    |   |
| 6.   |   |                    |  |                    |   |
| 7.   |   |                    |  |                    |   |
| 8.   |   |                    |  |                    |   |
| 9.   |   |                    |  |                    |   |
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| 12.  |   |                    |  |                    |   |
| 13.  |   |                    |  |                    |   |
| 14.  |   |                    |  |                    |   |
| 15.  |   |                    |  |                    |   |

Att: DDA 78-2044 STATINTL

Distribution:  
 Orig RS - DCI  
           1 - DDCI  
           1 - ER  
           1 - DDA

Executive Registry

78-5587

DDA 78-2044

16 May 1978

51 13 MAY 1978

MEMORANDUM FOR: Director of Central Intelligence

FROM: John F. Blake  
Deputy Director for Administration

Stan:

1. Frank Carlucci recently gave you for your consideration two different statements concerning tenure in the CIA. I believe he described their background to you. In both statements there appears the following quotation:

STATINTL

"Secondly, if the employee meets the definition as found in [REDACTED] and for two consecutive years is ranked in the bottom 3 percent of the person's category, then the case should be reviewed. If, in addition to being in the bottom 3 percent, the individual is given a poor performance indicator then dismissal may well be in order."

You have raised the following question in connection with that quotation:

"Is this the rule?"

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2. The policy for the question in quotation is found in [REDACTED] :

"i. LOW RANKING--WITH NOTIFICATION--IN TWO CONSECUTIVE YEARS. It is Agency policy to monitor the overall level of employee performance by application of comparative ranking to identify employees whose performance and potential are low in comparison with other employees of the same grade and functional category. The various evaluation panels and boards subordinate to a Career Service will identify employees who rank in the bottom three percent of those being ranked. They will then identify any of these who have, in the judgment of the panel, significant problems (relative to their peers) in performance, attitude affecting performance, or willingness to accept assignment in the interests of the Agency. The names of employees so identified will be sent, along with other pertinent material, to the Head of the Career Service, who will review the list, making deletions where

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circumstances do not support further action. After these deletions, the remaining employees on the list will be notified of the low ranking, the reasons for it, the availability of counseling to assist any effort to improve ranking, and the consequences of low ranking in a consecutive year. Upon notification of low ranking in a second consecutive year, the administrative action, depending upon the circumstances of the case, may include counseling, reassignment, downgrading, or separation. If the Head of the Career Service determines that separation is warranted under this paragraph, the case will be reviewed with the Director of Personnel before initiating separation procedures." (Underscoring supplied)

The process by which the policy is implemented is found in a memorandum of 22 October 1975 addressed to the Deputy Directors and issued by the Director of Personnel. It is attached at Tab A. The process is also addressed in paragraph 2.b. of a memorandum of 7 April 1978 and sent to the Deputy Directors by the DDCI (Tab.B).



STATINTL

John F. Blake

Atts

Distribution:

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TAB

Approved For Release 2001/09/01 : CIA-RDP81-00142R000400050002-4

22 Oct. 75

MEMORANDUM FOR: Deputy Director for Administration  
Deputy Director for Intelligence  
Deputy Director for Operations  
Deputy Director for Science and Technology  
Chairman, Senior Executive Career Service Panel

SUBJECT: Descriptors for Comparative Evaluation

REFERENCE: Employee Bulletin, No. 457, dtd 23 July 1975

1. We have achieved another milestone in our effort to bring greater uniformity to personnel management in the Agency. With the help of representatives of each of the Career Services we have developed a list of "descriptors" to be used in the comparative evaluation process. The resultant groupings should be very helpful to career boards and panels in the selection of employees for promotion, assignment, counseling and other career-related actions.

2. The attached "Descriptors for Comparative Evaluation Groupings" and "Special Listing for Potential Surplus--Function/Skills" are effective immediately. They are to be used by all Career Services in their next comparative evaluation exercise.

3. You may have other information which you wish to pass on to your careerists at this time so I am leaving to your discretion the particular format for disseminating the descriptors and surplus listing. However, this is an Agency-wide procedure and all employees should be made aware of it during the same general time frame. For that reason, I have set 14 November 1975 as the deadline for Career Services to disseminate the material to their careerists and to forward a copy of their communique to the OP/Plans Staff, 626 C of C.

4. Thank you and your representative for the fine cooperation which allowed us to accomplish this task in a timely manner.

/s/

F. W. M. Janney  
Director of Personnel

Atts  
As Stated

STATINTL

CONCUR:

Directorate for Administration

Date

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Comparative evaluation rankings will be based specifically on performance, potential, and value to the functioning of the particular Career Service or Career Sub-Group involved. The comparative evaluation of employees will be considered in determining appropriate work assignments, counseling and if required, adverse actions such as downgrading or separation.

Evaluation systems serve multiple purposes which cannot be accomplished by competitive ranking alone but in which such rankings play an important role. Thus, the determination of employees to be promoted stems from consideration of comparative ranking, performance, the response made to letters of instruction, and the demonstration of capabilities to handle responsibilities to be undertaken.

The Agency has affirmed its adherence to a merit system for personnel actions; therefore, the underlying principle for comparative evaluation must be the relative merit or value of an employee on the basis of performance and manifestation of potential.

#### HIGHEST POTENTIAL (HP)

Employees whose experience, qualifications and excellent performance in assignments and training indicate that they have the highest potential for advancement. Career actions should utilize and further develop this potential.

#### MAY DEVELOP HIGH POTENTIAL (MD)

Employees whose qualifications and performance clearly are above average and who give indication that they later may demonstrate high potential for greater responsibility. Career actions (assignment, training, experience on the job) should enhance their skills and develop this potential.

#### VALUABLE CONTRIBUTION (VC)

Employees whose performance is good and who generally are realizing their potential. This category will include some employees who may be capable of performing at a higher level of responsibility and some who may not. Among those who may not are employees who are making a vital contribution to the functioning of their office (above average or satisfactory performance) and would continue to do so either in their present or a rotational assignment. Career management for employees in this grouping should provide sufficient opportunities for work satisfaction, improvement of skills, and personal growth at current levels of responsibility so that those who may have future potential have an opportunity to demonstrate it.

## LIMITED POTENTIAL (LP)

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Employees whose over-all performance is adequate but who have some characteristic affecting knowledge or performance such that their potential is judged to be limited. Their career planning and counseling should consider whether there are measures which reasonably can be taken to assist them in overcoming such deficiencies, whether their talents can be utilized better in some other function or office, or whether they should be encouraged to seek career opportunities elsewhere.

## SUBSTANDARD (SS)

Employees whose performance and potential are substandard in comparison with others of the same grade and occupation category. Requisite administrative actions may include, dependent on the procedures of the Career Service, notification, counseling, training and/or reassignment. Employees in this grouping are subject to downgrading or separation under the procedures specified by Agency regulations and the Career Service. In a surplus situation, employees so evaluated would have low priority for retention.

## SPECIAL LISTING FOR "POTENTIAL SURPLUS-FUNCTION/SKILLS"

Agency regulations and recent court decisions obligate us to differentiate between those employees who may be considered for separation on the grounds of substandard performance and those who are surplus because the Agency no longer requires their particular skills or functions.

After the Boards have completed the rankings of employees according to present value to the Career Service, they should review the listings to asterisk those employees who come under the following categories for appropriate management action:

1. Are potentially surplus on the basis that their skills are no longer required by the organization, or
2. Are associated with functions to be reduced or eliminated, or
3. cannot be flexible with respect to assignment (where such flexibility is required).

Employees who have reasonable prospect for reassignment or advancement without retraining should not be identified in this category. Employees may become potentially surplus because the Agency's needs for skills changes over time; when this happens, it poses a career management problem for the employee and the Agency to work out. Should separation be the most appropriate outcome, it should be under the procedure for the separation of surplus personnel and should bear no stigma of poor performance unless that has also occurred.

TAB

78-1378

Executive Secretary

78-5/168

7 APR 1978

MEMORANDUM FOR: Deputy Director for Administration  
Director, National Foreign Assessment Center  
Deputy Director for Operations  
Deputy Director for Science and Technology  
Chairman, E Career Service

FROM: Frank C. Carlucci  
Deputy Director of Central Intelligence

SUBJECT: Uniform Promotion System

1. Many of the personnel policies of the Agency have been carefully reexamined during the last several months. We have concluded that the Agency and its employees will benefit from the adoption of a more uniform Agency-wide promotion system. The adoption of such a system, as described in this memo will increase employee awareness of promotion opportunities and will ensure more promotion headroom by implementing existing Agency regulations concerning identified marginal performers. We recognize that each career service has unique characteristics and problems which require consideration. This new approach will allow recognition of that uniqueness, but will also call for more expanded statements of promotion criteria by the several career services.

2. The new approach to establishing this promotion system will be based on the following precepts:

a. A minimum target for annual promotion of qualified people by grade will be established and published by each career service as an aid to each employee's career planning. The Office of Personnel will work with each career service in creating these promotion targets.

b. These promotion rates will be sustained for the most part through normal attrition, but additionally it will be necessary to apply aggressively the current regulation [REDACTED] for the identification of the bottom three percent evaluated annually. The bottom three percent is not simply determined by ranking, but also by an absolute determination of the employee's value and potential as assessed by the evaluation panels and career service boards.

STATINTL

c. As a further protection to the employee identified in this process, the career services will establish an independent panel to review each case on its individual merits and present its findings to the head of the career service.

d. The common criteria for promotion in all career services are presently set forth in [REDACTED]. Further guidance on these precepts is under study. The career services should carefully consider [REDACTED] with a view to adding specific criteria as applicable to each particular career service or subgroup. The publication of these specific criteria will further the individual employee's understanding of how selection for promotion is achieved, and how to become qualified for promotion. Any additional promotion criteria must be developed and published by the career services by 15 May 1978.

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e. As already established for the D Career Service, the rankings and recommendations for promotion from the evaluation boards and panels can only be changed by the Director.

f. There will be established and published a uniform promotion schedule for all career services (i.e., all GS-09's will be promoted in the same month, etc.). The Office of Personnel will work with the heads of the career services in establishing an Agency-wide uniform promotion schedule for all grades. The lists of those promoted will be published and available to all employees.

/s/ Frank C. Carlucci

Frank C. Carlucci

Distribution:

Orig - DDA

1 - Each additional addressee

1 - DDCI

1 - ER

1 - D/Pers

1 - DDA Subj, Chrono

1 - JFB Chrono

O/Personnel

Rewritten: DDA: JFB/ake:kmg (4 Apr 78)

Rewritten: DDCI: FCCarlucci:sm (7 Apr 78)

I believe it is necessary that we have a common understanding as to what employment tenure means in the Agency. On the one hand it does not mean that there is a full guarantee of any employee's continuing tenure if either his performance is not acceptable or if there no longer exists a need for the person's services. On the other hand there has to be an understanding that a reasonable guarantee exists and that the unique statutory firing authority of the DCI will not be used in an arbitrary or capricious fashion.

I believe that a reasonable definition of employment tenure in the Agency can be stated as follows. Our regulations state that a new employee serves during the first three years on a probationary status. During that period he may be removed from the Agency by action of the Director of Personnel if his performance is deemed less than adequate. The next period to be viewed should be that after the employee has successfully passed from the probationary period to a full staff status. After this act has taken place the employee's tenure could be affected by one of three developments. If there exists a demonstrably poor individual performance, as indicated by the annual Fitness Report, then individual action should be undertaken to determine whether the employee should be separated. Secondly, if the employee meets the definition as found in [REDACTED] and for two consecutive years is ranked in the bottom 3 percent of the person's category, then the case should be reviewed. If, in addition to being in the bottom

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3 percent, the individual is given a poor performance indicator then dismissal may well be in order. It also may be necessary from time to time to separate those who are in the bottom 3 percent for two consecutive years so that both additional positions may be made available for new hirings as well as to create additional headroom capability to promote more efficient employees. Thirdly, the needs of the organization for various types of individuals vary from time to time and it is possible because of the dynamics of the world the services of otherwise good and proficient employees will no longer be required.

The third period of tenure commences with the third year before the employee possesses an eligibility for an immediate retirement annuity. At this stage the individual's dedication and performance has been well demonstrated and, to the greatest degree possible, both the Government and the Agency owe him his right to receive his forthcoming retirement annuity. During this three-year period, then, unless the individual has demonstrably shown his lack of ability to continue his performance, the person should be given all consideration possible to remain on duty until such time as he is eligible for the annuity.

Lastly, there is the employment tenure subsequent to the date that the individual is fully qualified for retirement benefits. It is my belief that the needs of the service should be the major controlling factor at this time. After reaching this point, an individual has served a full career and it may be necessary, particularly for those who are qualified for retirement

under CIARDS, to be asked to step aside if such a request is necessary to ensure the continuance of a viable service. This very fact is recited in the legislative history of the CIARDS Act and has since been reiterated by several Directors to the Congress.

As I continue my meetings with various groups of employees the question often presents itself as to what I consider a career in the Agency. The answer to this question begins with our first attracting and hiring the most qualified people we can find and in having in existence a personnel management system that encourages those individuals to desire to be as productive and efficient in their work and to remain with the Agency for a life-span of work.

We start from the premise that the goals of the employees and the goals of the Agency are compatible. There does occur, however, infrequently situations where this compatibility does not exist. For example, if we were to be given a considerably reduced appropriation in any given fiscal year it could well mean we would have to reduce the size of the working force. At that point there would be an incompatibility between the desire of the employee to maintain his position as opposed to the need of the organization to reduce its total personnel. Under such conditions it is obvious that the need of the organization must prevail. Another example of the lack of compatibility could be a decision that the Agency no longer would engage in an identifiable function. Under such conditions, efforts would be made to see if those engaged in the function could be otherwise used. If it developed that no vacant positions existed for those whose function had been terminated, again the needs of the organization would have to prevail.

I believe that a reasonable definition of employment tenure in the Agency can be stated as follows. Our regulations state that a new employee serves during the first three years on a probationary status. During that period he may be removed from the Agency by action of the Director of Personnel if his performance is deemed less than adequate. The next period to be viewed should be that after the employee has successfully passed from the probationary period to a full staff status. After this act has taken place the employee's tenure could be affected by one of two developments. If there exists a demonstrably poor individual performance, as indicated by the annual Fitness Report, then individual action should be undertaken to determine whether the employee should be separated. Secondly, if the employee meets the definition as found in [REDACTED] and STATINTL for two consecutive years is ranked in the bottom 3 percent of the person's category, then the case should be reviewed. If, in addition to being in the bottom 3 percent, the individual is given a poor performance indicator then dismissal may well be in order.

The third period of tenure commences with the third year before the employee possesses an eligibility for an immediate retirement annuity. At this stage the individual's dedication and performance has been well demonstrated and, to the greatest degree possible, both the Government and the Agency owe him his right to receive his forthcoming retirement annuity. During this three-year period, then, unless the individual has demonstrably shown his lack of ability to continue his performance, the person

should be given all consideration possible to remain on duty until such time as he is eligible for the annuity. Lastly, the conditions of tenure for those who have acquired a retirement eligibility remain as stated above for all employees, i.e., continuing satisfactory performance and the need to the service.